

Thousand Dollars and Zero Cents (\$18,000.00). The amount of \$18,000 represents damages for unpaid wages, liquidated damages, attorney's fees and costs as detailed in this Agreement.

- **Motion to Approve Settlement and for Entry of Final Judgment.** The Parties agree that Plaintiff will present a motion to the Court requesting approval of this Agreement (attached hereto as Exhibit II) and requesting the Court to enter the Agreed Final Judgment in this Lawsuit. The Parties agree to cooperate in good faith to have the Court enter the Agreed Final Judgment in this Lawsuit.
- **Settlement Payment and Terms.** Defendants will pay the total sum of \$18,000.00 before nineteen (19) months following the Court's approval of this Agreement. The Defendants may pay the total sum in Individual Settlement Payments as described below.
 - **Initial Payment.** Within 30 days of the approval of the Agreement, Defendants shall make an initial payment to Plaintiff of \$1,000.00 in the following manner:
 - Send a check with sufficient funds for \$322.33, less appropriate payroll tax withholding (including for federal income tax and the employee's share of FICA) payable to "Ida Marie Peña," representing unpaid wages damages;
 - Send a check with sufficient funds for \$322.33, payable to "Ida Marie Peña," representing liquidated damages;
 - Send a check with sufficient funds for \$355.35 payable to "Equal Justice Center," representing costs and attorney's fees.
 - **Monthly Payments.** Thereafter, Defendants shall pay the remaining \$17,000.00 of the settlement funds in seventeen (17) monthly payments, with all remaining payments to be received by no later than nineteen (19) months following the Court's approval of the Agreement. Each monthly payment shall be a minimum of \$1,000.00. The monthly payments shall be delivered to Plaintiff's counsel on the same day of the month as the first payment. Each monthly payment will be apportioned in the following manner:
 - Send a check with sufficient funds for \$322.33, less appropriate

payroll tax withholding (including for federal income tax and the employee's share of FICA tax) payable to "Ida Marie Peña," representing unpaid wages damages;

- Send a check with sufficient funds for \$322.33, payable to "Ida Marie Peña," representing liquidated damages;
- Send a check with sufficient funds for \$355.35 payable to "Equal Justice Center," representing costs and attorney's fees.
- Mailing of Individual Settlement Payments. Defendants will deliver Individual Settlement Payments to Plaintiff's counsel to the following address: Equal Justice Center, c/o Colleen Mulholland, 8301 Broadway, Ste. 309, San Antonio, Texas 78209.
- Tax Treatment. Defendants will report and forward all amounts withheld from the wage portion of the settlement (federal income tax and the employee's share of Social Security and Medicare FICA tax payments) to the federal government. Separately, Defendants are solely responsible for payment to the government of the employer's share of Social Security and Medicare FICA tax payments. For each calendar year during which Individual Settlement Payments are made, Defendants shall file and provide Plaintiff with (1) a Form W-2 reporting the aggregate amount of wage payments and amounts withheld, and (2) a Form 1099-MISC with the aggregate amount of liquidated damages paid to Plaintiff entered in Box 3 as "Other Income." Defendants will send copies of the W-2 forms and 1099-MISC forms directly to Plaintiff on or before January 31, 2018 and January 31, 2019 to: (1) the last known address currently retained by Defendants for Plaintiff; or (2) to any address provided by Plaintiff or Plaintiff's counsel to Defendants on or before December 31, 2017 and December 31, 2018.
- Untimely Payments. If any payment is more than twenty (20) days past

due, Defendants shall pay as liquidated damages an additional 5% of the untimely payment in addition to the untimely payment.

- **Enforcement of Judgment.** Plaintiff agrees not to seek a writ of execution on the Agreed Final Judgment so long as Defendants timely make the Individual Settlement Payments. In the event any Individual Settlement Payment is more than thirty (30) days past due, Defendants agree that the entire amount of the Agreed Final Judgment, less any portion of the Settlement Payment already paid, shall become due and payable at the sole option of the Plaintiff, and that Plaintiff may commence any action allowable by law to enforce the Agreed Final Judgment and recover all costs of collection including, but not limited to, reasonable attorney's fees. Once all of the settlement payments have been made, Plaintiff shall provide Defendants with a Release of Judgment.
- **Persons and Entities Bound by this Agreement.** Plaintiff understands and agrees that by execution hereof, the terms of this Agreement are binding upon Plaintiff and upon all heirs, successors, and assigns of Plaintiff. Defendants understand and agree that by execution hereof, the terms of this Agreement are binding upon Defendants and upon all heirs, successors, and assigns of Defendants.
- **Authority to Execute.** The Parties executing this Agreement expressly represent that they are competent and authorized to enter this Agreement for the party each claims to represent, and to make all promises included in this Agreement.
- **Entire Agreement of the Parties.** The Agreement constitutes the entire agreement between the Parties respecting the subject matter hereof, and there are no representations, warranties, or commitments except those set forth herein. No modification of the Agreement will be enforceable unless it is in writing and signed by all parties.
- **Governing Law.** This Agreement shall be construed in accordance with the governing laws of the state of Texas.
- **Attorney's Fees.** The prevailing party in any dispute arising from this Agreement shall recover reasonable attorney's fees against the other party.
- **Severability.** If any one or more of the provisions of this Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Agreement, and the application of such provision to persons, entities, or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected, and shall continue to

be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision hereof shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the parties hereto regarding such provision.

- **Multiple Counterparts.** The Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- **Advice of Counsel.** Plaintiff and Defendants have been advised to consult with an attorney of their choice, at their own expense, in considering whether to accept the Agreement.
- **Neutral Reference.** If contacted by a third Party, Defendants agree, with respect to Plaintiff, to provide a neutral reference stating only the employee's title and dates of employment.

AGREED AS TO ITS ENTIRETY:

Plaintiff:




Ida Marie Peña

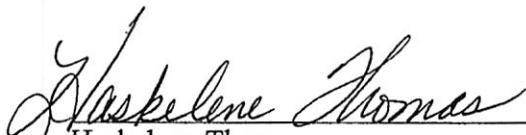
Date: 11-2-17

Defendants:

Waggoner & Thomas All-Care, Inc.

By: Haskelene Thomas Date: 11-01-2017

Its: 



Haskelene Thomas

Date: 11-01-2017

Hon. Xavier Rodriguez
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION



Ida Marie Peña;

Plaintiff,

v.

**Waggoner & Thomas All-Care, Inc., &
Haskelene Thomas;**

Defendants.

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CIVIL ACTION NO. 5:16-cv-1169-XR

**UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT AND ENTER
AN AGREED FINAL JUDGMENT**

TO THE HONORABLE COURT:

Plaintiff Ida Marie Peña, through her counsel of record, hereby moves the Court for an order approving a settlement agreement, attached as Exhibit “A” (the “Agreement”) to this Motion, and to enter an agreed final judgment against Defendants Waggoner & Thomas All-Care, Inc. and Haskelene Thomas, attached as “Exhibit “B” (the “Agreed Final Judgment”) to this Motion. In support of this Motion, Plaintiff shows as follows:

1. Plaintiff filed this action against Defendants under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (FLSA) asserting that Plaintiff is entitled to recover damages, including damages for unpaid wages, liquidated damages, attorney fees and costs. (Dkt No. 1).

2. Defendants were previously represented by Dykema Cox Smith. On August 7, 2017, the Court granted the withdrawal of the Defendants’ counsel in this action. (Dkt. No. 27). Previous to Defendants’ counsel withdrawing, the Parties had been engaged in settlement discussions for several months. (Dkt. No. 24). Since August 7, 2017, Defendants have not been represented by

counsel. As a result, the Court has stayed all deadlines in the current scheduling order (Dkt. No. 25) on three occasions to allow for Defendants to retain counsel. (Dkt. Nos. 27, 28, and 30).

3. The Parties have negotiated a resolution to this matter that will settle the pending claims in this lawsuit and will enter the Agreed Final Judgment in favor of Plaintiff and against Defendants. The parties agree that the Agreement is fair and reasonable, and no hearing before the Court is requested. The parties further agree that the Agreement is (a) fair to all parties; (b) reasonably resolves a *bona fide* disagreement between the parties with regard to the merits of the claims asserted in the action, including but not limited to the amount of hours worked and the amount of compensation due; and (c) demonstrates a good faith intention by the parties that Plaintiff's claims be fully and finally resolved, and not re-litigated in whole or in part at any point in the future.

4. The Agreement is attached to this Motion as Exhibit "A." The Agreed Final Judgment is incorporated into the Agreement and is separately attached to this Motion as Exhibit "B."

5. The Agreement has been executed by Plaintiff and Defendant Haskelene Thomas, individually and on behalf of Waggoner & Thomas All-Care, Inc. in her capacity as President of Defendant, Waggoner & Thomas All-Care, Inc. As evidenced by the Agreement, which also incorporates the present Motion, Defendants are in support of this Motion.

6. For these reasons, Plaintiff requests that the Court grant an order approving the Agreement and separately enter the Agreed Final Judgment in this action.

Respectfully submitted this October __, 2017.

EQUAL JUSTICE CENTER
8301 Broadway Street, Ste. 309
San Antonio, Texas 78209
Tel (210) 308-6222
Fax (210) 308-6223

/s/ Colleen Mulholland
Colleen Mulholland
Texas State Bar No. 24091765
Tel (210) 308-6222, ext. 101
cmulholland@equaljusticecenter.org

Philip J. Moss
Texas State Bar No. 24074764
Tel (210) 308-6222, ext. 102
pmoss@equaljusticecenter.org

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

This is to certify that on October 26, 2017 Plaintiff's counsel conferred in person with Defendant Haskelene Thomas, President of Defendant Waggoner & Thomas All-Care, Inc. Defendants indicated by execution of the Agreement that they are in support of this Motion.

/s/ Philip J. Moss
Philip J. Moss

CERTIFICATE OF SERVICE

I hereby certify that on October __, 2017, I transmitted the attached document to the Clerk of Court using the ECF system for filing and by USPS certified mail, return receipt requested to the parties below:

Waggoner & Thomas All-Care, Inc.
4606 Centerview Dr., Ste. 165
San Antonio, TX 78228

Ms. Haskelene Thomas
4606 Centerview Dr., Ste. 165
San Antonio, TX 78228

/s/ Philip J. Moss
Philip J. Moss

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Ida Marie Peña;

Plaintiff,

v.

**Waggoner & Thomas All-Care, Inc., &
Haskelene Thomas;**

Defendants.

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CIVIL ACTION NO. 5:16-cv-1169-XR

**PROPOSED ORDER ON PLAINTIFF'S UNOPPOSED MOTION TO APPROVE
SETTLEMENT AGREEMENT AND ENTER AGREED FINAL JUDGMENT**

On this day, the Court reviewed the Plaintiff's Unopposed Motion to Approve Settlement Agreement and Enter Final Agreed Judgment. After reviewing the Motion, the Settlement Agreement, and the Agreed Final Judgment, the Court is of the opinion that the Motion is meritorious and well-taken, and the Court hereby grants the Motion and hereby approves the Settlement Agreement and the entry of the Agreed Final Judgment in this action.

It is THEREFORE ORDERED that Plaintiffs' Unopposed Motion to Approve Settlement Agreement and Enter Agreed Final Judgment is GRANTED.

It is FURTHER ORDERED that the Parties' Settlement Agreement is APPROVED.

It is FURTHER ORDERED that the Clerk of Court will separately enter the Agreed Final Judgment as a final judgment in this action.

Signed this _____, 2017.

Hon. Xavier Rodriguez
U.S. District Judge